



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,944	07/07/2003	Robert Len Aske		6623

7590 11/08/2005
Robert Len Aske
1640 Kilmer Ave
St. Louis Park, MN 55426

EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT PAPER NUMBER

3641

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/613,944

Examiner

Michelle (Shelley) Clement

Applicant(s)

ASKE, ROBERT LEN

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 02 September 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
 - ☒ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☒ C. Other See Continuation Sheet.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☒ A. A complete listing of all of the claims is not present.
 - ☒ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Continuation of 1(c) Other: All amendments and changes must be in typewritten form, handwritten form is not permissible.

Continuation of 4(e) Other: All amendments and changes must be in typewritten form, handwritten form is not permissible.

DETAILED ACTION***Response to Amendment***

1. The reply filed on 9/2/05 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant's amendment's are not in proper form (please see enclosed information on the proper form for filing amendments), applicant has not addressed all issues and rejections of the Office Action dated 6/14/05). Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

2. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent

Art Unit: 3641

Roster.” Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "M. Clement", is located in the bottom right corner of the page.



Revised Amendment Practice

37 CFR 1.121

Effective date: July 30, 2003

Changes to Implement Electronic Maintenance of Official Patent Application Records, 68 Fed. Reg. 38611 (June 30, 2003), 1272 Off. Gaz. Pat. Office 197 (July 29, 2003) (final rule).



Revised Amendment Practice

- ✧ Revised amendment practice, 37 CFR 1.121, applies to amendments filed on or after July 30, 2003,
 - Except amendments to the specification and claims filed in reissue applications and reexamination proceedings.
 - A sample amendment document, questions and answers, and other information on the practice are posted on the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/moreinfoamdtpac.htm>

Revised Amendment Practice

- Preliminary, non-final, and supplemental amendments are reviewed by technical support staff to determine whether they are in compliance with § 1.121.
- After final amendments are reviewed by examiners to determine whether they are in compliance with § 1.121.
- The examiner's amendment practice has not changed.
 - Examiners may continue to make additions or deletions of subject matter in the specification, including claims, in examiner's amendments by instructions to make the change at a precise location in the specification and/or the claims (without compliance with § 1.121(b)(1), (b)(2), or (c)).

Revised Amendment Practice

Amendments to Claims

⚡ *Claim Listing* - When there is any amendment to a claim, a claim listing of all claims ever presented in the case must be supplied in ascending numerical order.

⚡ A simple example of a claim listing is as follows:

- Claims 1-5 (canceled)
- Claim 6 (previously presented) A bucket with a handle.
- Claim 7 (withdrawn) A handle comprising an elongated wire.
- Claim 8 (withdrawn) The handle of claim 7[[6]] further comprising a plastic grip.
- Claim 9 (currently amended) A bucket with a green-blue handle.
- Claim 10(original) The bucket of claim 9 wherein the handle is made of wood.
- Claim 11(canceled)
- Claim 12 (not entered)
- Claim 13 (new) A bucket with plastic sides and bottom.

Revised Amendment Practice

Amendments to Claims

✎ A claim listing must include:

- The **claim number** of every claim ever presented in the application, whether entered or not;
- A **status identifier**, in parentheses, following each claim number;
- The **text of all pending claims** (including withdrawn claims); and
- **Markings** to show the changes made only in the current amendment relative to immediate prior version.

✎ The claims in the claim listing of the current amendment will replace all prior versions, and listings, of claims in the application.

Revised Amendment Practice

Amendments to Claims

The seven (7) permissible **status identifiers**:

1. **(Original)**: Claim filed with original specification
 - Not added by preliminary amendment and
 - Not previously amended.
2. **(Currently amended)**: Claim being amended and which is not withdrawn in the current amendment
 - Must include markings (strikethrough, double brackets, or underlining) to indicate changes.
3. **(Canceled)**: Claim canceled or deleted in current amendment or previously.
 - Do not present the text of a canceled claim.
 - Consecutive canceled claims may be grouped together (e.g., claims 1-5 (canceled)).

Revised Amendment Practice

Amendments to Claims

The seven (7) permissible **status identifiers** (cont.):

4. **(Withdrawn)**: Non-elected claim.
 - The text of a withdrawn claim must be presented.
 - Currently amended withdrawn claims must be presented with markings (striketrough, double brackets, or underlining) to indicate changes.
5. **(Previously presented)**: Claim that was previously added or amended in an earlier amendment paper.
6. **(New)**: Claim being added in the current amendment paper.
 - The text of the claim must be presented in clean form without underlining.
7. **(Not entered)**: Claim presented in a previous unentered amendment.
 - Do not present the text of a not entered claim.
 - Consecutive not entered claims may be grouped together (e.g., Claims 20-25 (not entered)).

Revised Amendment Practice

Amendments to Claims



The listing of claims must comply with the following:

- A status identifier for each claim is required. Multiple status identifiers must not be used for any single claim.
- The text of all claims being currently amended must be presented with markings to show changes relative to immediate prior version.
 - Only claims of the status “currently amended” and “withdrawn” (if the withdrawn claims are being currently amended) may include markings.
 - All other pending claims (including withdrawn claims that are not being currently amended) must be presented in clean text (without markings).

Revised Amendment Practice

Amendments to Claims

The listing of claims must comply with the following (cont.):

- Canceled claims and not entered claims may only have a “canceled” or “not entered” status identifier after the claim number. The text must not be supplied.
- New or added claims must have “new” as a status identifier.
- Grouping of claims – consecutive canceled claims or not entered claims may be aggregated into one line.

Example: Claims 1-5 (canceled), or

Claims 20-25 (not entered).

Revised Amendment Practice

Markings to Show Changes



Markings must be included in the following amendments to show all changes relative to the immediate prior version:

- Replacement paragraphs,
- Replacement sections (including abstract),
- Currently amended claims, and
- Substitute specifications.

Revised Amendment Practice

Markings to Show Changes

Added text must be shown by underlining.

Deleted text must be shown by **strikethrough** (e.g., ~~strikethrough~~), with 2 exceptions:

- For deletion of five or fewer consecutive characters, **double brackets [[]]** may be used (e.g., ~~[[error]]~~); and
- If strikethrough cannot be easily perceived, deleted text must be shown by **double brackets [[]]** around the deleted text characters.
- For example: changing “4 corners” to “three corners” should be indicated by “three[4] corners”.

Revised Amendment Practice

Amendments to Specification

The location of the paragraph or section to be deleted or replaced, or where a new paragraph or section is to be added, must be unambiguously identified.

- The location can be identified by using a few words at the beginning and/or the end of the paragraph or section.

Do not underline the text of a new paragraph or section.

Deletion of a paragraph or section must only include an instruction to delete, and the location of the paragraph or section.

Replacement paragraph or section must be a marked-up version showing the changes.

A clean version of any replacement paragraph or section must not be submitted in addition to a marked-up version, except when applicant submits a substitute specification.

Revised Amendment Practice

Amendments to Abstract

- ✦ An amendment to an abstract is treated like an amendment to the specification.
 - If the changes are minor in nature, submit a replacement abstract with markings to show all changes relative to the immediate prior version.
 - If the abstract is being substantially rewritten, submit a new abstract in clean text (no markings) accompanied by an instruction for the cancellation of the previous abstract.
 - Any new, or replacement, abstract must be submitted on a separate sheet (37 CFR 1.72).

Revised Amendment Practice

Substitute Specification

- ✦ Substitute specification under 37 CFR 1.125 requires:
 - A statement that the substitute specification includes no new matter.
 - A specification with markings to show all the changes relative to the immediate prior version.
 - A clean version (without markings) of the substitute specification.
 - The requirements of a marked-up version and a clean version have been retained.

Revised Amendment Practice

Amendments to Drawings

✦ Amendments to drawings must include:

- **Replacement drawing sheet** showing amended figures which include the desired changes, without markings, on a separate sheet in compliance with section 1.84; and
- **Explanation of the changes** in the remarks, or preferably, in the drawing amendments section, of the amendment paper.

✦ The examiner may require a marked-up copy of the amended figures with annotations showing the changes (annotated drawing sheet).

Revised Amendment Practice

Amendments to Drawings



Replacement drawing sheets must be identified in the top margin as “Replacement Sheet.”



New drawing sheet must be identified in the top margin as “New Sheet.”



Annotated drawing sheet must be identified in the top margin as “Annotated Sheet.”

- . Do not enter Annotated drawing sheets as part of the official drawings for the application.

Revised Amendment Practice

Amendments to Drawings

- ✖ Proposed drawing correction process is eliminated.
- ✖ Replacement drawing sheet with changes is accepted by examiner, unless otherwise notified by examiner. No further drawing submission is required.
- ✖ If not acceptable, the examiner should notify applicants of any objections or additional requirements.

Revised Amendment Practice

Non-compliant Amendment

If the amendment is a reply to a non-final Office action, technical support staff will mail applicant a Notice of Non-Compliant Amendment that identifies:

- Each section of the amendment that is not in compliance with 37 CFR 1.121;
- Items that are required for compliance; and
- The reasons why the section of the amendment fails to comply with 37 CFR 1.121.

In reply to the Notice, applicants must submit the corrected section of the amendment that was non-compliant.

- Re-submission of the entire amendment is not required.
- The entire section, however, with corrections, must be resubmitted.

Revised Amendment Practice

After Final Amendments

- Any amendment after final (§1.116), or amendment filed with a request for continued examination (RCE) under §1.114, must include markings showing the changes relative to the last entered amendment.
 - Markings to show changes relative to any unentered amendment are not permitted.

Revised Amendment Practice

After Final Amendments

Examiners are responsible for determining whether after-final amendments are in compliance with 37 CFR 1.121.

If the amendment is non-compliant, the examiner should notify applicant and provide the reasons for the non-compliance.

The examiner may use the Notice of Non-Compliance Amendment with an advisory action to notify the applicant.

The time period continues to run and no new time period will be provided in the advisory action for non-compliant after-final amendments.

Revised Amendment Practice

After Final Amendments

A non-compliant after final amendment may be corrected by using an examiner's amendment.

1. Within six-month statutory period: examiner may correct the non-compliance and any other substantive omissions to place the application in condition for allowance.
 - **Applicant's authorization** for the examiner's amendment is required to be provided within the statutory period and any required extension of time fee is paid.
2. After the six-month statutory period: examiner may correct the non-compliance if the examiner's amendment is limited to correcting **format** errors (such as correcting the status identifiers).

Revised Amendment Practice

After Final Amendments

For example, if some of the status identifiers are incorrect in the after-final amendment, examiner may:

1. Provide a claim listing presenting all of the claims with the proper status identifiers in an examiner's amendment;
2. Print a copy of the claim listing of the non-compliant after final amendment, cross out the improper status identifiers, write in the correct status identifiers and include it as an attachment to an examiner's amendment; or
3. Correct the improper status identifiers by instructions in an examiner's amendment.